

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against PETER JAMES NICKITAS,  
a Minnesota Attorney,  
Registration No. 212313.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 26, 1990. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. On July 2, 1993, respondent received an admonition for disclosing information relating to a former client. Respondent disclosed the confidential information after his client terminated him and filed a complaint with the Director. The Director determined that respondent's reporting of his client's conduct was based upon information learned during the course of representation and that the disclosure was made by respondent in an effort to chill his client's willingness to pursue her complaint with the Director. For these actions, the Director issued an admonition to respondent in

violation of Rules 1.9(b) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC) (Exhibit 1).

b. On April 27, 1999, respondent received an admonition for failing to file a federal tort claim within the statute of limitations and failing to diligently pursue other matters relating to correction of his client's military records. The Director found respondent violated Rule 1.3, MRPC (Exhibit 2).

c. On July 23, 2003, respondent received an admonition for using a derogatory term, intended as a sexist epithet, toward the complainant. The use of this derogatory term served no substantial purpose other than to embarrass or burden the complainant. The Director found respondent violated Rules 4.4 and 8.4(g), MRPC (Exhibit 3).

### FIRST COUNT

#### Sex With a Client

##### Introduction

1. On or about February 24, 1994, Lynn Debra Williams retained respondent to represent her in a child support collection/paternity action against Gerald Buchanan. Respondent's representation in that matter ended in 2003.

2. In 2002 respondent represented Williams against the City of Duluth regarding zoning issues and in September 2003 respondent filed suit on behalf of Williams against Fairbanks Capital.

##### Sex With Client

3. In the fall of 2000, respondent and Williams began a sexual relationship while respondent was actively pursuing Williams' child support/paternity matter. That relationship continued until approximately December 2003. Respondent continued to represent Williams on various other legal matters during the entire period of their sexual relationship.

4. Respondent's conduct in engaging in a consensual sexual relationship with a client violated Rule 1.8(k), MRPC.

## SECOND COUNT

### Business Transactions With Client

#### Loans from Client

5. Also in 2003, Williams began loaning money to respondent. Williams deposited a total of \$9,900 into either respondent's business or personal accounts (Exhibit 4). Respondent did not give Williams notes memorializing these loans, nor did he provide for interest or repayment terms.

6. Respondent did not advise Williams in writing to seek independent counsel before loaning him the money nor did he seek Williams' informed consent in writing to the loan transactions. Because the loans were completely undocumented and did not provide for interest or security the loan transactions were not fair and reasonable for Williams.

7. Respondent has not repaid the loans.

#### Townhouse Purchase

8. Williams owned a townhouse referred to as the "Morgan Park townhouse." In 2003 respondent purchased the townhouse from Williams.

9. Respondent failed to advise Williams in writing to seek independent counsel before entering into the transaction, did not disclose the terms of the transfer to Williams in writing, and did not obtain Williams' consent in a document separate from the closing documents.

#### Car Purchase

10. Williams owned a 1991 Honda Accord. In 2003 respondent needed a vehicle and purchased the Honda from Williams (Exhibit 5).

11. Respondent failed to advise Williams in writing to seek independent counsel before entering into the transaction, nor did he disclose the terms of the purchase to Williams in writing or obtain her consent in a separate document.

12. Respondent failed to pay for the car making it necessary for Williams to have it repossessed.

13. Respondent's conduct in entering into business transactions with a client without written disclosure of the potential conflicts and without providing for fair and reasonable terms for his client violated Rule 1.8(a), MRPC.

### THIRD COUNT

#### Mishandling of Paternity Appeal

##### Lying-in Expenses

14. In March 1994 and again in January 1995, respondent moved the district court to order lying-in expenses be paid by Buchanan to Williams. Both motions were denied and respondent appealed.

15. In March 1995 the Court of Appeals dismissed respondent's appeal finding the appeal was interlocutory and premature.

16. In June 1999 respondent filed an unrelated motion with the district court. Lying-in expenses were not addressed in his motion. A hearing was held in November 1999. In its order, the district court found its consideration of the issues was narrowed to the relief requested and therefore denied lying-in expenses. Respondent appealed the November 1999 order.

17. The Court of Appeals concluded that the appeal of the November 1999 order was premature, as there remained an outstanding issue of visitation. The district court resolved the visitation issue in November 2000 and a final judgment was entered. Thereafter, respondent failed to appeal.

18. In October 2001 respondent brought motions for increased prospective and retroactive child support, reimbursement for lying-in expenses and attorney fees incurred by Williams (Exhibit 6, pp. 1-2).

19. The October 10, 2001, district court order set out in detail the procedural history of the case. It stated, "All prerequisites for an appeal were satisfied, at the latest, on November 3, 2000. No appeal was filed. Therefore, the relief Plaintiff now seeks which is identical to that heard and decided by the November 18, 1999 Order must be denied." (Exhibit 6, p. 2.)

20. Respondent appealed the October 10, 2001, order. The Court of Appeals affirmed the district court order denying lying-in expenses (Exhibit 7).

#### Attorney's Fees

21. Respondent also argued to the Court of Appeals that the district court abused its discretion regarding attorney fees in its October 10, 2001, order. The issue of attorney's fees had also been previously addressed in the November 1999 order. Respondent did not timely challenge the final judgment on that order and the Court of Appeals affirmed the district court's refusal to consider Williams' motion for attorney's fees (Exhibit 7).

#### Child Support Arrearages

22. In December 1994 respondent moved the district court for an increase and retroactive child support. The district court denied respondent's motion and in January 1995 respondent appealed. The Court of Appeals dismissed the appeal as being premature (Exhibit 7).

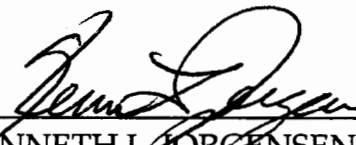
23. In June 1999 respondent filed another motion for retroactive child support. The district court's November 1999 order directed Buchanan to pay \$21,500 in child support arrearages. This is the same order that left the issue of visitation opened and was decided in November 2000. Respondent appealed the order stating that the district court had abused its discretion in determining the amount awarded. The Court

of Appeals found that respondent had not challenged the judgment and therefore barred Williams from raising the issue (Exhibit 7).

24. Respondent's conduct in failing to file a timely appeal of the November 2000 final judgment and his subsequent filing of motions previously decided by the unappealed judgment violated Rules 1.3 and 3.1, MRPC..

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: May 17, 2005.

  
KENNETH L. JORGENSEN  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 159463  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and

  
BETTY M. SHAW  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 130904